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May 26, 1989

The Honorable Duane K. Wells
Assessor
County of Mendocino
Courthouse, Room 102
Ukiah, CA 95482

Dear Duane:

This is in response to your letter of April 28, 1989, requesting advice regarding the application of Revenue and Taxation Code section 51.5 to certain property located in Mendocino county. I have also received a letter from David L. Esq., dated May 8, regarding the same subject.

Based on the information furnished in your letter, we understand that the subject parcel, located in the city of Ukiah, consists of land, certain landscaping improvements and two office buildings. Since 1979, when it appears that the improvements were added, most of the property (74% of the land and landscaping improvements, and 90% of the buildings) have been leased to the Pacific Telephone and Telegraph Company. Since PT&T is a state assessee, your office incorrectly assumed that the portion of the land and improvements leased to PT&T were included on the state-assessee roll. For that reason, the county only assessed a portion of the property consisting of 26% of the land and landscaping improvements and 10% of the buildings. In effect, the property was treated for assessment purposes as if it were two separate parcels. In May of 1981, the property sold for \$550,000 but, based upon the previous erroneous assumption regarding the PT&T lease, your office established a new base year value of \$76,000 (land \$32,500, improvements \$43,500) for that portion of the property not subject to the PT&T lease. In November of 1988, your office discovered the fact that the remaining portion of the property was not state assessed and that it had, in fact, escaped assessment. As a result, you enrolled escape assessments for 1985-86, 1986-87 and 1987-88. In addition, increased value has been added to the 1988-89 tax roll. These changes in value result from your correction of the 1981 base year value of the property to reflect the full purchase price for the entire property, trended forward by the inflation factor for each year thereafter.

May 26, 1989

Although not expressly stated in your letter, it does not appear that this was a case in which the property was merely underassessed. Rather, the appraisal records indicate that the parcel was divided into two parts. The smaller portion, consisting of 26% of the land and 10% of the structures, was deemed to be county assessed. The remaining portion of the property was deemed to be state assessed. Thus, with respect to the latter portion of the parcel, the base year value was completely omitted. When the error was discovered in 1988, you corrected this omission pursuant to the authority granted by Revenue and Taxation Code section 51.5. After correcting the base year value which should have been reflected on the roll for March 1, 1982, you adjusted the base year value for each subsequent lien date to reflect the inflation factor. The escape assessments were issued pursuant to subdivision (d) of section 51.5 for those years open under the applicable statutes of limitations. The escape assessments reflect the fact that there was a complete omission of assessment of the portion of the property leased by PT&T.

Your first question asks whether the situation described above is an example of a clerical error envisioned by subdivision (a) of section 51.5. The short answer is "No." "Clerical errors" is defined in subdivision (f)(2) of section 51.5 as defects of a mechanical, mathematical or clerical nature not involving judgment as to value where it can be shown from the papers in the assessor's office or other evidence that the defect resulted in a base year value that was not intended by the assessor at the time it was determined. This does not describe your situation in that the information provided indicates that the 1982 base year value established in your working papers for the property in question was the value placed on the roll. While your situation does not, in our opinion, qualify as a clerical error, it is clear that subdivision (a) of section 51.5 authorizes you to correct the base year value in this situation. Subdivision (a) mandates that the assessor correct any error or omission in the determination of a base year value, including the failure to establish that base year value, which does not involve the exercise of an assessor's judgment as to value.

While subdivision (c) of section 51.5 describes certain types of errors, including clerical errors, which are not included within the concept of an error involving the exercise of an assessor's judgment as to value, that list is not exclusive. The situation described here also falls into the category of an error or omission not involving the assessor's judgment as to value. It is clear that you did not attempt to place any base year value on the portion of the property leased to PT&T. Rather, due to a mistake of fact (i.e., that the property was

state assessed), you obeyed the mandate of Revenue and Taxation Code section 405 that requires annual assessment of all property in your county, except state-assessed property. It seems beyond debate that your failure to establish a base year value for the subject property did not involve the exercise of judgment as to value and, thus, subdivision (a) is applicable.

Your second question is whether your office properly enrolled the escape assessments and added value to the 1988-89 tax roll. Subdivision (d) of section 51.5 expressly authorizes the use of escape assessments in the case of an increase of base year value. Based upon your comment that the error was apparently a clerical error, it appears that the four-year statute of limitations described in Revenue and Taxation Code section 532 is applicable. This provision permits an escape assessment within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed. If the escape assessments were made in November of 1988, an escape assessment for the 1985-86 assessment year, as defined in section 113, falls within the period described in section 532. That is, the assessment is made within four years after July 1 of 1985. Since the escape assessment for 1985-86 is timely, the assessments for the later years are also timely.

Your third question is not applicable since we have concluded that section 51.5(a) applies here.

Your fourth question requests advice on the avenues of appeal open to the assessee. Chapter 537 of the statutes of 1987 which added section 51.5, also amended section 80 of the Revenue and Taxation Code by adding subdivision (a)(4) which authorizes, in the case of a base year value determined pursuant to section 51.5, an application for equalization during the appropriate equalization period for the year in which the error is corrected or in any of the three succeeding years. Since the escape assessments were made outside the regular assessment period, we are in agreement with your conclusion that Revenue and Taxation Code section 1605, which requires that an application for equalization be filed within 60 days after the date the assessee is notified of the assessment, is applicable.

Mr. David E. Shell requests that we also consider the question of whether the four-year statute of limitations for escape assessments runs from the year in which the property initially escaped tax or whether it runs backwards from the year in which the escape was discovered. Citing Dreyer's Grand Ice Cream, Inc. v. County of Alameda (1986) 178 Cal.App.3d 1174, Mr. Shell argues that since the error was not discovered and corrected

within four years after the 1981 change in ownership, the failure to establish the base year value for the subject property cannot now be corrected.

We are unable to agree with Mr. Shell's suggestion for a number of reasons. First, it should be recognized that the Dreyer's case dealt with the situation in which property was underassessed. It was clear from the facts in that case that the assessor did exercise his judgment as to the value of the property. Thus, the case did not deal with the situation where there was a complete failure to establish a base year value. We believe that the Dreyer's decision is not applicable to the facts before us.

Further, Chapter 537 of the Statutes of 1987 was a direct legislative response to the Dreyer's decision. Part of the court's rationale in the Dreyer's decision was based upon the fact that the Legislature had not provided any guidance as to correction of post-March 1, 1975 base year values. Chapter 537 remedies that situation.

Of particular interest are the findings and declarations of the Legislature found in section 1 of Chapter 537. In part, this section declares that the amendments to sections 531.2 and 532 of the Revenue and Taxation Code are necessary to make clear that an escape assessment resulting from the correction of an error in a base year value may be made within four, six, or eight years, as applicable, after the first day of July of the assessment year, as defined in section 118, in which the property either wholly escaped taxation or was underassessed. This declaration is coupled with amendments to sections 531.2 and 532 which expressly state that the term "assessment year" means the period defined in section 118. That term has for many years been defined in section 118 as the period beginning with a lien date and ending immediately prior to the succeeding lien date. These express references to the section 118 definition correct the language in the Dreyer's decision which attempts to equate the term with the year in which the base year value is determined.

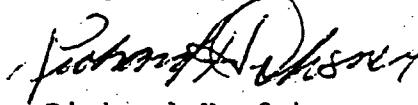
Return to the statutory meaning of "assessment year" restores sections 531.2 and 532 to their originally intended meaning. Thus, for purposes of section 532, the general statutes of limitations for making an escape assessment is four years after July 1, of the assessment year in which the property escaped taxation or was underassessed. In this case, the portion of the property leased by PT&T apparently escaped taxation in every assessment year following the 1979 lease of the property to PT&T. After the 1981 change in ownership which should have established a new base year value, the property escaped

May 26, 1989

taxation in 1982-83, 1983-84, etc. For each year that the property escaped taxation, section 531 authorizes an escape assessment provided that the assessment is made within the periods limited by either sections 531.2 or 532. In this case, section 532 seems applicable. Since the escape assessments were not made until November of 1988, an escape assessment for periods prior to 1985-86 would be beyond the period permitted by section 532. But, obviously, escape assessments for 1985-86 and following are authorized. I trust that the foregoing satisfactorily responds to Mr. Shell's question.

I have attached for your information copies of two letters written on May 24, 1988 which deal generally with this same subject. Reading these letters should help you in better understanding the responses I have made to your questions.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

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Enclosures

cc: David

Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton